IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

1. S.B. CIVIL WRIT PETITION No.3513/2004
RANJEET SINGH V/S STATE OF RAJ. & Ors.
and
2. S.B. CIVIL WRIT PETITION No.5635/2005
RANJEET SINGH V/S STATE OF RAJ. & Ors.

DATE OF ORDER ::: 10th APRIL,2007

PRESENT

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri B.L. Sharma, Senior Advocate with
Shri Chandra Shekhar Shrma for petitioner.
Shri H.V. Nandwana, Dy. Govt. Advocate.

REPORTABLE

Aggrieved by the impugned order dated 24.6.2005 passed by the District Collector, Jaipur, the aforesaid two writ petitions have been filed by petitioner Ranjeet Singh questioning non-renewal of his arms licence. In the first Writ Petition No.3513/2004, challenge has been made to the letter dated

22.4.2004 by which the authorised arms dealer, M/s Jindal and Company, Panch Batti, M.I. Road, Jaipur, with whom the petitioner had deposited his licensed arm viz. one 12 Bore DBBL Gun No.75623 and .32 Bore Revolver No.B-1872 at the time of election, was directed not to return these weapons to the petitioner without prior permission of the Police Station, Mahesh Nagar. Under challenge in the second Writ Petition No.5635/2005 however is the order of the District Collector dated 24.6.2005 whereby he cancelled the licence of the petitioner with regard to the aforesaid two weapons and ordered their forfeiture. Since in both the writ petitions, dispute pertains to the same person and with regard to the same weapons, they have been heard together and are being decided by this common judgment.

In the first writ petition, the petitioner has inter alia contended that he being a Sarpanch of Gram Panchayat of village Lambakala in Panchayat Samiti Todarai Singh of District Tonk, is a prominent figure of the society and therefore requires arms for his self defence and security of his family. He applied for and was granted two licenses on which basis he purchased one 12 Bore DBBL Gun No.75623 by Bharat Small Arms – Made in India and one .32 Bore Revolver No. B-1872 by IOF. These licenses were granted to him in the year 1993 and were valid upto December, 2005. During Parliament Elections of 2004, SHO, Police Station, Mahesh Nagar, Jaipur required him to deposit these two arms with the authorised arms dealer and accordingly

the petitioner deposited them with M/s Jindal & Company, Panch Batti, MI Road, Jaipur on 5.4.2004. Even before the petitioner could recollect the weapons after the election, SHO, Mahesh Nagar, Jaipur vide communication dated 22.4.2004 directed the aforesaid arms dealer not to return them back to the petitioner. When the petitioner approached the arms dealer on 11.5.2004, he was informed about the aforesaid letter. The second writ petition was filed after the order of cancellation of licenses and forfeiture weapons was passed by the District Collector.

I have heard Shri B.L. Sharma, learned Senior Advocate assisted by Shri Chandra Shekhar Sharma, learned counsel for the petitioner and Shri H.V. Nandwana, learned Dy. Government Advocate.

Shri B.L. Sharma, learned counsel for the

petitioner argued that when show cause notice was served upon the petitioner, the District Collector had merely indicated about filing of the two criminal cases against the petitioner – one lodged as FIR No.142/90 at Police Station Bajaj Nagar for the offence under section 453 IPC and another in FIR No.143/90 at Police Station Bajaj Nagar for offence under section 3/25 of the Arms Act and that the petitioner concealing the fact about the chargesheets having been filed against him in these cases, obtained the arms licence and further that he also concealed his real identity in that while his correct name was Radhey Shyam Daroga but he presented himself as Ranjeet Singh and obtained licence in that name. When however final order of cancellation of the arms licences was passed, the District Collector referred to

as many as thirteen criminal cases having been filed against him. The petitioner was acquitted in both the cases referred to in the show cause notice vide judgments dated 20.8.96 and 3.7.2001. Shri B.L. Sharma, further argued that much more than what was indicated in the show cause notice to elicit response from the petitioner, was made basis for cancellation of licence which amounted to denying reasonable opportunity of hearing to the petitioner. Impugned order was therefore contrary to the provision of section 17 of the Arms Act as also against the principle of natural justice. He in this connection relied on the judgment of the Hon'ble Supreme Court in Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai & Ors. - JT 1998 (7) SC 243.

Shri B.L. Sharma argued that most of the

cases referred to in the impugned order were stale and the petitioner has been acquitted in them. The District Collector in his order has referred to the fact that the Police Station, Mahesh Nagar, even opened history sheet against the petitioner but did not take into consideration the fact that the proposal of the Police Station, Mahesh Nagar was disapproved by the District administration itself. Though a notice dated 12.5.2004 was served on the petitioner by the Additional District Magistrate for initiating proceedings against him u/s 110 Cr.P.C. But when he explained that out of three cases referred to in the notice, he had already been acquitted in two cases, the Additional District Magistrate being convinced, decided to drop the proceedings u/s 110 Cr.P.C. by his order dated 18.8.2004. This fact however has been

completely ignored by the learned District Magistrate in his order. The petitioner also denied the charge of impersonation and to deny the charge, produced copies of his driving licence, marriage card, domicile certificate, election certificate of Sarpanch and copy of Rajasthan Gazette changing his original name Radhey Shyam Daroga. As regards the individual cases, Shri B.L. Sharma learned counsel for the petitioner cited the copies of the judgments passed in Cr. Case No. 142/90 for offence u/s 3/25 of Arms Act, Cr. Case No.725/97 for offence under sections 448, 453, 468 and 471 IPC, Cr. Case No.727/97 for offences under sections 448, 453, 467, 468 and 471 IPC and Cr. Case No. 237/95 for offences under sections 323, 341 and 307 IPC in all of which the petitioner was acquitted. Yet the learned District Magistrate has made them

basis for passing the order of cancellation of the arms licenses of the petitioner. Besides these, he submitted that Cr. Case No. 182/03 for offences under sections 420, 418, 424 and 120-B, IPC was still pending trial. In Cr. Case No.94/04 for offences under sections 420, 465, 467, 468, 471, 474 and 120-B, IPC, the police upon investigation did not find proof and therefore submitted final report. In Cr. Case No. 237/95 for offences under sections 323, 341 and 307 IPC, charges against the petitioner were dropped vide order of the court dated 27.7.2001. So far as Cr. Case No.252/97 for offences under sections 147, 341, 323 IPC read with section 3 of the Scheduled Castes & Scheduled Tribe (Prevention of Atrocities) Act is concerned, the petitioner has not even been named in the said FIR as would be evident

from the copy thereof which has been placed on record. Now only one criminal case is pending investigation being FIR No. 182.03 at Police Station Jyoti Nagar, Jaipur for offences under sections 420, 418, 424 and 120-B, IPC. In view of these facts, it cannot be said that the petitioner has become a threat to the peace and tranquility of the society so as to justify cancellation of his arms licenses.

Shri B.L. Sharma argued that the petitioner had to file writ petition directly before this court bypassing the remedy of appeal because there was utter failure of the principle of natural justice in passing of the impugned order and therefore the remedy of appeal in the circumstances of the case cannot be taken as absolute bar to the maintainability of the writ petition. Alternative remedy cannot

come as a bar for entertaining a writ petition where there has been whole some violation of principle of natural justice, as has been held by their lordships of the Supreme Court in Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai and Others (1998) 8 SCC 1. It was therefore prayed that the impugned orders be quashed and set aside and the respondents be directed to restore the arms licenses originally granted to the petitioner.

Per contra, Shri H.V. Nandwana, learned Deputy Government Advocate argued that the writ petition is not maintainable because the petitioner has the remedy of appeal under section 18 of the Arms Act before Home Commissioner, therefore the writ petition be dismissed on this ground alone. It was argued that when the petitioner obtained the arms licence, he was required

to specifically declare about the number of criminal cases registered against him and even if he has been acquitted therein later, the fact remains that the petitioner procured the arms licence by concealing all this material information. It is the factum of the petitioners involvement in number of criminal cases which is important and not that such cases ultimately resulted in acquittal. There were in all thirteen criminal cases registered against the petitioner and chargesheet was also filed against him in all except one. The learned District Magistrate on receiving complaint from the Police Station, Mahesh Nagar, called for the report from the Additional Superintendent of Police, Jaipur City, Jaipur (South). Taking into consideration the entire circumstances, the District Magistrate considered it necessary

for the security of public peace and public safety to cancel the licenses earlier granted. Impugned order was passed after giving show cause notice to the petitioner and after considering reply submitted by him. It was therefore submitted that the impugned order does not suffer from any legal infirmity and the writ petition deserves to be dismissed.

I have given my earnest consideration to the rival arguments advanced by learned counsel for the parties and scrutinised the material on record.

Even though, the remedy of appeal is available to the petitioner against the impugned order before the Home Commissioner u/s 18 of the Arms Act but the petitioner had approached this court even prior to passing of the order of revocation/cancellation of licence and this

court vide interim order dated 2.9.2004 directed that even if any order was passed during the pendency of the writ petition, the same shall remain subject to decision of this writ petition. When therefore his arms licenses were cancelled during the pendency of the first writ petition, the petitioner filed second writ petition impugning the order of cancellation. These writ petitions have remained pending ever since and the petitioner has documented them very well by producing certified copies of the judgments in almost all the cases which were made basis for revocation/cancellation of his arms licenses. In view of all these facts and particularly when I have heard the arguments on merits of the case also, it would be in the interest of justice to decide the writ petitions on merits rather then relegating

the petitioner to the remedy of appeal at this stage. I therefore proceed to examine the matter on merit.

First argument which the learned counsel for the petitioner has raised is that when only two criminal cases were referred to in the show cause notice, the learned District Magistrate erred in law in basing his order on as many as thirteen criminal cases which are said to have been lodged against the petitioner. Owing to this reason, he was denied reasonable opportunity of hearing inasmuch as this amounted to violation of the principles of natural justice. In the absence of notice, the petitioner could not present his side of the story. This argument, when examined on the facts of the case, it is found that apart from the fact about the impersonation made by the petitioner, only two criminal cases were

mentioned in the show cause notice. Argument is that if the petitioner was granted the opportunity to explain about all thirteen cases referred to in the impugned order, he would have clarified his position. This argument implies that although opportunity of hearing was given but it was not proper opportunity of hearing. It also implies that the petitioner does not deny the factum of the criminal cases having been registered against him but given the chance, he would have clarified that in almost all of them he had been acquitted and that in some of them he was not even chargesheeted or even the charges framed against him were dropped. Case of the petitioner in substance thus is that he has not received a fair deal at the hands of the respondents.

Such argument will have to be decided on

the touch stone of prejudice and I find that show cause notice was given to the petitioner and he has responded to such show cause notice. If certain additional material became available to the District Magistrate prior to passing the impugned order, what has to be therefore examined is that even if the petitioner had been informed about the other criminal cases filed against him, would he have been in a position to falsify that version. In other words, though in substance compliance of principle of natural justice was made but only part of the information that was made use of by the District Magistrate while passing the impugned order was not furnished to the petitioner. Their lordships of the Supreme Court in a number of judgments have held that when a grievance is raised about non-compliance of principles of natural

justice, the distinction ought to be made between the cases where there had been no adherence to the principles of natural justice and those where complaint is that adequate opportunity of hearing has not been provided. In cases of later category, however, the grievance has to be examined on the touch stone of the prejudice. Hon'ble Supreme Court in S.L. Kapoor v/s Jagmohan & Others – (1980) 4 SCC 379 on this aspect of law made the following observations in para 24 of the report :

> “In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or

> indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal."

Crux of the matter is that in making the aforesaid argument the petitioner does not dispute the fact regarding lodgment of such criminal cases reference to which was made by the learned District Magistrate in his order. He merely strives to explain them away by stating that in most of them he was acquitted. What has to be therefore seen is whether the fact that the petitioner was not notified about all these cases before passing the impugned order has caused any real prejudice to the petitioner just because the District Magistrate took them

into consideration while cancelling the licenses. In this connection, I may usefully refer to the following judgment of the Supreme Court in K.L. Tripathi v/s State Bank of India & Others - (1984) 1 SCC 43 in para No.32 of which their lordships held as under :

> “The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal

> opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement."

In constitutional bench judgment of the Hon'ble Supreme Court in Managing Director, ECIL, Hydrabad & Others v/s B. Karunakar & Others – (1993) 4 SCC 727, their lordships of the Supreme Court also took a view that when an employee is punished in a disciplinary enquiry, just because copy of the enquiry report is not furnished to him, his punishment ought not to have been set aside as a mater of course. But the courts are required to apply their judicial mind to the question as to whether supply of such report would have been made a difference to the result. Following observations in para 13

of the report are worth quoting here under :

> “This court had specifically to consider the legal position arising out of the Forty-second Amendment of the Constitution by which Clause (2) of Article 311 was amended and the part of the said clause, viz., “and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry” was deleted. In that decision, this Court has not dealt with the procedure to be followed by the disciplinary authority after the enquiry officer's report is received by it. The question whether the delinquent employee should be heard by the disciplinary authority to prove his innocence of the charges levelled against him when they are held to have been proved by the enquiry officer, although he need not be heard on the question of the proposed penalty, was neither raised nor answered. This decision, therefore, is not helpful for deciding the said question.”

Principle and proposition of law that

where infraction of the principles of natural justice is complained of, validity of an order has to be decided on the touch stone of prejudice has again been reiterated by their lordships of the Supreme Court in State Bank of Patiala & Others v/s S.K. Sharma – (1996) 3 SCC 364 in para 28 of which it was held as under :

> "xx xx xx

> a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid."

In my considered view, therefore, the mere fact that the petitioner was not informed about other criminal cases in which he was involved, in addition to those included in the show cause notice, did not cause any real prejudice to the petitioner because even if he had been informed about the same, it would have resulted in his reiterating the same argument which he, with reference all these cases referred to in the impugned order has reiterated now before this court and particularly when he does not deny that those cases were actually registered against him.

Coming now to the argument that in most of the thirteen cases referred to in the order passed by the learned District

Magistrate, the petitioner was acquitted/discharged and in one of them Final Report was given and therefore this could not afford any basis to the District Magistrate to arrive at the conclusion that not cancelling licence of the petitioner would have posed any threat to the security of the public peace or for public safety in the meaning of section 17(3)(b) of the Arms Act, 1959, it should be noted that the District Magistrate in the impugned order has mentioned about filing of thirteen criminal cases and in eleven of which chargesheets have been filed against the petitioner. Reference to only two cases against the petitioner in the year 1990 was made in the show cause notice in the context of the fact that the petitioner when he applied for obtaining of arms licence in the year 1993 concealed completely such criminal cases

registered against him and all other cases were of later years. He has also referred to the recommendation made by the SHO, Mahesh Nagar, Jaipur and the Additional Superintendent of Police and while taking into consideration those recommendations and antecedents of the petitioner arrived at the required satisfaction.

In view of the fact that the petitioner was involved in criminal activities and at one stage even proceedings u/s 110 Cr.P.C. were also proposed against him, retention of arms by him might pose threat to the security of the public peace or for public safety, this objective satisfaction arrived at by the District Magistrate cannot be said to be unfounded. A Full Bench of the Patna High Court in Kapildeo Singh v/s State of Bihar & Ors.-AIR 1987 Patna 122 had the occasion to consider the true scope of section 17(3) of

the Act in the context of this question and in para No.12 of which it was held as under :

> “xx xx xx

Another – AIR 1958 Calcutta 420 also had the occasion to consider a similar controversy and in para 7 of which it was held as under :

> “xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx xx
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> The Divisional Commissioner has given reasons fairly and fully. The reason is that the appellant was involved in several litigations of a serious nature and that a person who is so involved in that way could not be considered to be a suitable person for possessing a revolver. There, again, the reasons are there. The question whether such reasons are right or wrong is not for this Court to examine under Art. 226 mala fide. I cannot help expressing the view that the reasons appear to me to be good.
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> The law as I understand it is not that a person can only be refused a licence for a revolver if in such a case he has been convicted by a criminal court. Even if he is not convicted or even if he is acquitted, it may very well be a ground to refuse him a gun licence as not being a safe person to have such fire arms. Even if the Magistrate's reasons were far too brief the Commissioner's reasons are fuller and as the Commissioner is the appellate authority under the

> Rules, the requirement of reasons for the refusal is in these circumstances amply satisfied."

Critical analysis of the law as discussed above, would indicate that in spite of the fact that the petitioner was acquitted in most of the criminal cases in which he was involved, the District Magistrate was yet entitled to take into consideration not only the number of cases but also the nature of allegations him together with the report received from the Addl. S.P. and the application of the SHO, Police Station Mahesh Nagar to arrive at the required satisfaction in the meaning of section 17(3)(b) of the Act that it was necessary for the security of the public peace or for public safety to revoke the licence. Whether revocation of the licence under the provisions of sub-section (4) of Section 17 was necessary for the purpose of the public

piece or for public safety and in doing so, if he has arrived at the satisfaction that it was necessary to cancel/revoke the licence granted to the petitioner, this court in exercise of its power of judicial review under Article 226 of the Constitution of India cannot substitute such satisfaction recorded by the licensing authority unless reasons recorded are so perverse, obnoxious and outrageous that no person of reasonable prudent could reach such satisfaction or the decision was actuated by malafides or based on extraneous considerations. Employment of the kind of phraseology in section 17 of the Act by the legislature leaves no manner of doubt that a wide residuary discretion has been vested in the licensing authority to revoke the licence provided it is satisfied that the holder is unfit for the licence

under the Act and in doing so he is entitled to take into consideration not only such criminal cases which have resulted into conviction but also those which have ended in acquittal and even the mere pendency of criminal case.

The statute has provided an inbuilt safeguard against the arbitrary exercise of power by the licensing authority if it decides to suspend or revoke the licence by requiring in section 17(1) of the Act that it shall give notice to the licensee and if after consideration of his explanation, it decides to vary, suspend or revoke the licensee, a further safeguard has been provided by section 17(5) of the Act by insisting upon the licensing authority that it must record in writing the reasons therefor. Licensing authority has thus been required to record the satisfaction, though

subjective but on objective consideration of the material before him. So long as the reasons recorded by him reasonably support the finally arrived at conclusions, interference by this court in such satisfaction recorded by the licensing authority would not be justified in law.

Moreover, another significant aspect of the matter which stairs at the face of the petitioner is that he concealed the factum regarding two criminal cases filed against him in the year 1990 when he applied for and obtained the licence in the year 1993. When pointedly asked to explain this, he replied to the show cause notice on 17.6.2001 copy of which is available in Writ Petition No.5635/2005. He merely stated that he had been acquitted in those criminal cases but did deny the fact that he concealed this vital information in his application form

for obtaining arms licence nor did he assert such information was given by him. He has not even in the said writ petition asserted anywhere that he had disclosed about the lodgment of these two criminal cases while making application for obtaining the arms licence. His version is that he has been acquitted in these cases.

Adverting now to the argument that the learned District Magistrate has referred to the history sheet proposed to be opened against the petitioner by the police at the instance of SHO, Mahesh Nagar but the District Magistrate but failed to consider that it was not approved by the Addl. District Magistrate who dropped the proceedings by order dated 18.8.2004, it may be noted that dropping of the proceedings like discharge in a criminal case cannot be placed on a higher pedestal

than acquittal in a criminal case and even if this one fact is ignored, there are very many other grounds which can sustain the impugned order because the order as such is not founded on this factor alone.

In view of what has been discussed above, I do not find any merit in these writ petitions which are accordingly dismissed with no order as to costs.

(Mohammad Rafiq),J.

Chauhan/